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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GREENE/GUILFORD ENVIRONMENTAL :  
ASSOCIATION, a non-profit corporation :  
incorporated under the laws of the :  
Commonwealth of Pennsylvania, CITIZENS :  
FOR PLANNED COMMUNITY GROWTH, :  
an unincorporated association organized :  
under the laws of the Commonwealth of :  
Pennsylvania, PAUL B. AMBROSE, JOHN G. :  
ENDERS, CHARLES F. RAHAUSER, BETSY :  
RAHAUSER, DOUGLAS A. WARNOCK, U.X. :  
VAGNERINI, THOMAS W. BUNDY, STEPHEN P. :  
BUCHER, ROGER J. ROBERTSON, JAMES A. :  
STRITE, JR., DAVID A. GUTHRIE, :

Plaintiffs, :

v. :

KEN WYKLE, Administrator, Federal :  
Highway Administration, ROBERT GATZ, :  
Federal Highway Administration, :

Defendants, :

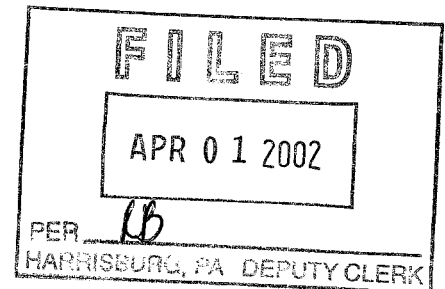
and :

BRADLEY L. MALLORY, Secretary for :  
The Department of Transportation, :  
Commonwealth of Pennsylvania, :

Intervenor. :

CIVIL ACTION NO.  
1:CV-01-0910

(RAMBO, J.) ✓



DEFENDANTS' RESPONSE TO THE MOTION FOR RECONSIDERATION

Defendants Wykle and Gatz, officials of the Federal Highway  
Administration, by and through Martin C. Carlson, United States

Attorney for the Middle District of Pennsylvania, and the undersigned Assistant United States Attorney, hereby file this response to the Intervenor's Motion for Reconsideration of the Court's order of March 1, 2002:

1. On March 1, 2002, this Court issued a memorandum and order granting in part and denying in part the Plaintiffs' motion to supplement the administrative record;

2. On March 29, 2002, Defendants and the Intervenor filed additional documents in accordance with that order;

3. The Intervenor also filed a Motion for Reconsideration of one paragraph of the Court's order:

4. While the Motion for Reconsideration was limited to a portion of the order relating only to PennDot documents and was based solely on the extraordinary expense of time and money required to produce documents which may or may not exist, the Plaintiffs' brief in opposition to the Motion for Reconsideration compels the Defendants to make this response;

5. First, Plaintiffs' response makes much of the fact that the Motion for Reconsideration is filed only by the Intervenor, and is not joined by the Defendants. This response is intended, in part, to make clear that if Plaintiffs interpret this to mean a lack of support for the Intervenor's position, no such


inference should be drawn. The Motion was styled as it was for the reasons outlined in paragraph 4 above;

6. Second, although Plaintiffs have complied with the Court's order and have not sought reconsideration of any part thereof, the United States wishes to state its position again for the record: Plaintiffs initiated this action against officials of the Federal Highway Administration to challenge the validity of the decision made by the Federal Highway Administration. PennDot chose to intervene in this case because it is the grantee of the Federal Funds at issue and because it compiled certain documents for consideration by the Federal Highway Administration in making the federal agency's decision regarding the location of the exit. Documents authored by agencies other than the Federal Highway Administration which were not submitted to the Federal Highway Administration (such as emails between PennDot employees) were not before the federal decision maker at the time of that agency's decision and are outside of the Federal Highway Administration's administrative record. Idaho Conservation League v. Thomas, 917 F. Supp. 1458, 1468-69 (D. Idaho 1995). See also Society Hill Towers Owners' Ass'n v. Rendell, 20 F. Supp. 2d 855, 862-63 (E.D. PA. 1999), aff'd 210 F.3d 168 (the court denied request to supplement record because "[t]o review more than the information before the Secretary at the time [he] made [his] decision risks our requiring administrators to be

prescient or allowing post hoc rationalizations." Id. at 863  
(citations omitted).

Respectfully submitted,

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Dated: April 1, 2002

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GREENE/GUILFORD ENVIRONMENTAL :  
ASSOCIATION, et al, : CIVIL ACTION NO.  
: 1:CV-01-0910  
Plaintiffs, :  
v. :  
: :  
KEN WYKLE, et al., :  
: :  
Defendants, :  
: :  
and :  
: :  
BRADLEY L. MALLORY, :  
: :  
Intervenor. :

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

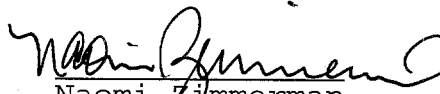
That on April 1, 2002, she served a copy of the attached:

**DEFENDANTS' RESPONSE TO THE MOTION FOR RECONSIDERATION**

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

Addressee:

Thomas Alan Linzey, Esquire  
COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND  
2859 Scotland Road  
Chambersburg, Pennsylvania 17201

  
Naomi Zimmerman  
Legal Assistant